

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
ROGER BARBER, d/b/a)	DOCKET NO. CWA-05-2005-0004
BARBER TRUCKING,)	
)	
)	
RESPONDENT)	

ORDER ON COMPLAINANT'S MOTION IN LIMINE

This proceeding arises under the authority of Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(g), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-32. The Complaint issued in the above-cited matter charges Respondent with violating Section 405(e) of the CWA, 33 U.S.C. § 1345(e), and 40 C.F.R. part 503, "Standards for the Use or Disposal of Sewage Sludge," and proposes a civil administrative penalty in the amount of \$60,000. Respondent is a *pro se* litigant in this matter.

Following the parties' submission of their prehearing exchanges in this matter, an Order Scheduling Hearing was entered on December 20, 2005. Pursuant to that Order, the parties are directed to file a joint set of stipulated facts, exhibits, and testimony by April 7, 2006. The hearing is scheduled to begin on April 25, 2006 in Cincinnati, Ohio.

On January 27, 2006, the United States Environmental Protection Agency, Region 5 ("Complainant" or "the EPA") filed Complainant's Motion for Discovery Related to Respondent's Ability to Pay ("Motion for Discovery"). The EPA sought an order that directed Respondent to comply with an attached discovery instrument. The discovery instrument consisted of interrogatories and requested documents, including a Statement of Financial Affairs Questionnaire.

On February 17, 2006, Complainant filed an Initial Joint Set of Stipulated Facts, Exhibits, and Testimony ("Initial Set of Stipulations") and a Motion in Limine to Prohibit the Introduction of Additional Facts, Testimony, or Exhibits Related to the Matter of Respondent's Ability to Pay ("Motion in Limine"), along with a Withdrawal of Complainant's Motion for Discovery Related to Respondent's Ability to Pay. Complainant seeks an order in limine prohibiting the introduction of any additional facts, exhibits, or testimony related to the matter of Respondent's ability to pay beyond those contained in the Initial Set of Stipulations. The Initial Set of Stipulations provide as follows:

1. The Parties stipulate that Roger Barber d/b/a Barber Trucking is financially able to pay the proposed penalty of \$60,000. To do so may require Mr. Barber to either: 1) pay the penalty over time, 2) secure a loan for a portion of the penalty to pay the penalty in one lump sum, or 3) utilize Mr. Barber's line of credit for a portion of the penalty to pay the penalty in one lump sum.

2. The Parties stipulate that no further facts, exhibits or testimony related to Mr. Barber's ability to pay the proposed penalty, beyond these stipulated facts, will be introduced at the hearing.

Complainant states that Respondent does not oppose the proposed order in limine.

Inasmuch as the parties have stipulated that "no further facts, exhibits or testimony related to Mr. Barber's ability to pay the proposed penalty, beyond these stipulated facts, will be introduced at the hearing," the Motion in Limine appears to be superfluous. Nonetheless, such unopposed motion is Granted in view of the stipulations between the parties. Further, Complainant's Motion for Discovery is ordered Withdrawn.

The parties are reminded that the Hearing in this matter will be held beginning at 9:30 a.m. on Tuesday, **April 25, 2006** in Cincinnati, Ohio, continuing if necessary on April 26, 27, and 28, 2006. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter.^{1/}

^{1/} In addition, the Regional Hearing Clerk shall provide the undersigned Administrative Law Judge the name(s) of any person who has notified the Regional Hearing Clerk of his or her desire to
(continued...)

The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete. Individuals requiring special accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at least five business days prior to the hearing so that appropriate arrangements can be made.

IF EITHER PARTY DOES NOT INTEND TO ATTEND THE HEARING OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

Barbara A. Gunning
Administrative Law Judge

Dated: March 2, 2006
Washington, DC

^{1/} (...continued)
participate in the proceedings as permitted under Section 309(g)(4) of the Clean Water Act. See Supplemental Rules Governing Public Notice and Comment in Proceedings under Sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and Section 1423(c) of the Safe Drinking Water Act, 40 C.F.R. § 22.45.